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State v. Kuiper-Boles Appellant's Brief Dckt. 44137

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IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|-----------------------|---|--------------------------------|
| STATE OF IDAHO, |) | |
| |) | NO. 44137 |
| Plaintiff-Respondent, |) | |
| |) | CANYON COUNTY NO. CR 2015-3400 |
| v. |) | |
| |) | |
| SARA M. KUIPER-BOLES, |) | APPELLANT'S BRIEF |
| AKA: SARA MAY BOLES, |) | |
| SARA M. BOLES, |) | |
| Defendant-Appellant. |) | |
| _____ |) | |

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, thirty-year-old Sara M. Kuiper-Boles pleaded guilty to felony injury to child. The district court imposed a unified sentence of ten years, with four years fixed. Ms. Kuiper-Boles later filed an Idaho Criminal Rule 35 ("Rule 35") motion for a reduction of sentence, which the district court denied. On appeal, Ms. Kuiper-Boles asserts the district court abused its discretion when it denied her Rule 35 motion.

Statement of Facts and Course of Proceedings

Dr. Paul McPherson of St. Luke's Children's Hospital in Boise spoke with Wilder Police Department Chief Tveidt about J.A.C., an infant who had been admitted to the

hospital a week prior. (Presentence Report (*hereinafter*, PSI), p.3.) J.A.C. had been treated for bilateral subdural hematomas overlying the cerebral hemispheres, a left cerebellar subacute infarct, and abnormal eye movements likely secondary to sixth nerve palsies because of large chronic subdural hematomas and resulting intracranial pressures. (PSI, p.3.) Dr. McPherson believed J.A.C.'s injuries were consistent with child abuse. (PSI, p.3.) J.A.C.'s mother had told the doctor that J.A.C. had fallen off a couch at the house of his babysitter, Ms. Kuiper-Boles. (PSI, p.3.) Dr. McPherson confirmed J.A.C.'s injuries were not caused by a fall. (PSI, p.3.)

J.A.C.'s parents were interviewed at the Wilder Police Department. (PSI, p.3.) J.A.C.'s father stated that Ms. Kuiper-Boles had told J.A.C.'s mother that the infant had fallen off her couch, and J.A.C. became fussy and unhappy over the next week or two. (PSI, p.3.) When Chief Tveidt told J.A.C.'s father the doctor did not believe the injuries were caused by a fall, J.A.C.'s father stated he did not know how J.A.C. received the injuries. (PSI, p.3.) J.A.C.'s mother reported Ms. Kuiper-Boles told her J.A.C. rolled off her couch but was not hurt. (PSI, p.3.) J.A.C.'s mother transported J.A.C. to the doctor's office after he started vomiting, and J.A.C. later underwent a CT scan after it was found his head was larger. (PSI, p.3.) J.A.C.'s mother also did not know how J.A.C. was injured. (PSI, p.3.)

Officers spoke with Ms. Kuiper-Boles, who stated she began babysitting for J.A.C.'s mother a couple months before. (PSI, p.4.) She stated J.A.C. rolled off the couch about ten days before he was admitted to St. Luke's. (See PSI, p.4.) Ms. Kuiper-Boles stated she did not think J.A.C. struck his head on the floor, and she did not know how J.A.C. received his injuries. (PSI, p.4.)

Canyon County Detective Becker later learned from a representative of the Idaho Department of Health and Welfare that Ms. Kuiper-Boles' sister had called and expressed her concerns about the safety of Ms. Kuiper-Boles' youngest daughter. (PSI, p.4.) The sister reported Ms. Kuiper-Boles had bipolar disorder and schizophrenia, and had abused her three older children. (See PSI, p.4.) Ms. Kuiper-Boles' relatives had custody of those three children. (PSI, p.4.) The sister also stated she would have warned the family of J.A.C. if she had known Ms. Kuiper-Boles was babysitting him, and Ms. Kuiper-Boles was a compulsive liar. (PSI, p.4.) Detective Becker then spoke with Ms. Kuiper-Boles' mother, who reported similar concerns and also stated Ms. Kuiper-Boles was a liar. (PSI, p.4.) The mother discussed a conversation she had had with Ms. Kuiper-Boles where she overheard a baby crying, and she thought Ms. Kuiper-Boles had harmed J.A.C. (PSI, p.4.)

When detectives subsequently interviewed Ms. Kuiper-Boles and told her they knew she had caused J.A.C.'s injuries, Ms. Kuiper-Boles reportedly began crying and stated she had been frustrated with J.A.C.'s parents because they had left the infant in her care for two days. (PSI, p.5.) She reportedly confessed to violently shaking J.A.C. at her house. (PSI, p.5.) Ms. Kuiper-Boles estimated she had shaken J.A.C. for approximately five seconds, and she knew deep down J.A.C. was sick because of the shaking. (PSI, p.5.)

The State charged Ms. Kuiper-Boles by Information with injury to children, felony, Idaho Code § 18-1501(1), and an actual infliction of great bodily injury sentencing enhancement pursuant to I.C. § 19-2520B. (R., pp.18-21.) The district court entered a not guilty plea on her behalf. (R., pp.22-23.)

Pursuant to a plea agreement, Ms. Kuiper-Boles later agreed to plead guilty to felony injury to child, and the State agreed to withdraw the sentencing enhancement. (R., pp.31-43.) There was no agreement as to an underlying sentence. (R., p.31.) The district court accepted Ms. Kuiper-Boles' guilty plea. (R., p.35.)

At the sentencing hearing, the State recommended the district court impose a unified sentence of ten years, with four years fixed. (R., pp.49-51.) Ms. Kuiper-Boles recommended the district court impose a unified sentence of ten years, with two years fixed, and that it suspend the sentence and place her on a period of probation. (R., p.50.) The district court imposed a unified sentence of ten years, with four years fixed. (R., pp.52-53.)

About eight months later, Ms. Kuiper-Boles sent a *pro se* Motion for Correction or Reduction of Sentence, ICR 35, to the prosecutor's office. (R., pp.60-64.) The State filed an Objection to Rule 35 Motion and Request for Hearing with the district court. (R., pp.57-59.) The State also provided to the district court a copy of the Rule 35 motion, which was then filed. (See R., pp.68-69.)

The district court issued an Order Denying Motion for Correction or Reduction of Sentence Pursuant to I.C.R. 35. (R., pp.68-71.) The district court noted a Rule 35(b) motion must be filed within 120 days of the entry of the judgment imposing sentence, and "unless a Rule 35 motion is filed within the prescribed period, the court lacks authority to grant relief." (R., pp.69-70 (citing I.C.R. 35(b); *State v. Mace*, 157 Idaho 885, 888 (Ct. App. 2015); *State v. Hocker*, 119 Idaho 105 (Ct. App. 1991).) The district court determined that because the Rule 35 motion had not been filed until "nearly four months after the [120-day] deadline had expired, it is untimely and the Court had no

jurisdiction to grant the relief requested.” (R., p.70 (footnote omitted).) The district court therefore denied Ms. Kuiper-Boles’ Rule 35 motion. (R., p.70.)

Ms. Kuiper-Boles filed, *pro se*, a Notice of Appeal timely from the district court’s Order Denying Motion for Correction or Reduction of Sentence Pursuant to I.C.R. 35. (R., pp.72-76.)

ISSUE

Did the district court abuse its discretion when it denied Ms. Kuiper-Boles’ Idaho Criminal Rule 35 Motion for a Reduction of Sentence?

ARGUMENT

The District Court Abused Its Discretion When It Denied Ms. Kuiper-Boles’ Idaho Criminal Rule 35 Motion For A Reduction Of Sentence

Ms. Kuiper-Boles asserts that the district court abused its discretion when it denied her Rule 35 motion for a reduction of sentence. “A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe.” *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994) (citation omitted). “The denial of a motion for modification of a sentence will not be disturbed absent a showing that the court abused its discretion.” *Id.* “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *Id.* “If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction.” *Id.*

A motion to correct or modify a sentence under Rule 35(b) “must be filed within 120 days of the entry of the judgment imposing sentence or order releasing retained jurisdiction” I.C.R. 35(b). The Idaho Court of Appeals has held that “unless a motion to reduce a legal sentence is filed within 120 days, a district court lacks jurisdiction to grant any relief.” *E.g., State v. Parrish*, 110 Idaho 599, 600-01 (Ct. App. 1986). Here, the district court issued its Judgment and Commitment on July 1, 2015. (R., p.52.) Ms. Kuiper-Boles signed and notarized her Rule 35 motion on February 19, 2016, and the prosecutor received a copy of the Rule 35 motion on February 25, 2016. (R., pp.60, 63.) A copy of the Rule 35 motion was filed with the district court on March 7, 2016. (R., p.60.)

Mindful of the above authorities and the timing of the filing of her Rule 35 motion, Ms. Kuiper-Boles submits the district court abused its discretion when it denied her Rule 35 motion. As she asserted in the motion, Ms. Kuiper-Boles came to “see how selfish I was being and began to realize that I wasn’t the victim in this case.” (R., p.61.) She stated, “I soon realized that the only thing I could do to make things right was to make better choices from here on out.” (R., p.61.) Ms. Kuiper-Boles also related, “I attend LDS 12 step weekly and have earned my certificate. That class has allowed me to open up and share. I have received a lot of feedback and have learned to trust others.” (R., p.61; see R., p.64.) Ms. Kuiper-Boles knows that she still has a lot of work to do, and addressed the district court: “I hope that you will bless me with a chance at a Rule 35 so that I may continue my sentence and be placed in classes to improve me and help me be a better person, and a parent who makes better decision[s].” (R., pp.61-62.)

Thus, Ms. Kuiper-Boles submits the district court abused its discretion when it denied her Rule 35 motion for a reduction of sentence.

CONCLUSION

For the above reasons, Ms. Kuiper-Boles respectfully requests that this Court reduce her sentence as it deems appropriate.

DATED this 14th day of September, 2016.

/s/ _____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of September, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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DAVIS F VANDERVELDE
DISTRICT COURT JUDGE
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DEPUTY ATTORNEY GENERAL
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E- MAILED

/s/ _____
MAGALI CEJA
Administrative Assistant

BPM/mc